

## REMARKS

Claims 1-9 are pending in this application. Claims 1, 6, and 9 have been amended to obviate the Examiner's rejection based on 35 U.S.C. 112, second paragraph.

The amendments to the claims presented herein do not introduce new matter. Accordingly, the Examiner is respectfully requested to enter these amendments.

Included with this Amendment is an Information Disclosure Statement. Applicants earnestly request that the listed references be considered by the Examiner and be made of record herein.

### Rejections Under 35 U.S.C. §112

- A. Response to rejection of claims 1-9 under 35 U.S.C. §112, second paragraph, as being indefinite.

In response to the rejection of claims 1-9 under 35 U.S.C. §112, second paragraph, as allegedly being indefinite, Applicants have amended claims 1, 6, and 9 as suggested by the Examiner. Reconsideration and withdrawal of the Rejection respectfully is requested.

### Double Patenting Rejections

- B. Response to provisional rejection of claims 1-9 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-9 of copending Application No. 10/499,182 (US 2006/0047071).

In response to the provisional rejection of claims 1-9 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-9 of copending Application No. 10/499,182 (US 2006/0047071), Applicants kindly request the Examiner to hold this rejection in abeyance since neither application has issued as a patent.

- C. Response to provisional rejection of claims 1-9 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of copending Application No. 10/518,882 (US 2005/027874).

In response to the provisional rejection of claims 1-9 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of copending

Application No. 10/518,882 (US 2005/027874), Applicants kindly request the Examiner to hold this rejection in abeyance since neither application has issued as a patent.

Rejections Under 35 U.S.C. § 103

D. Response to rejection of claims 1-9 under 35 U.S.C. §103(a) as being unpatentable over Moriya et al.

In response to the rejection of claims 1-9 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,214,934 of Moriya et al. ("Moriya"), Applicants submit that a *prima facie* case of obviousness has not been made out, and traverse the rejection.

The U.S. Supreme Court in *Graham v. John Deere Co.*, 148 U.S.P.Q. 459 (1966) held that non-obviousness was determined under §103 by: (1) determining the scope and content of the prior art; (2) ascertaining the differences between the prior art and the claims at issue; (3) resolving the level of ordinary skill in the art; and, (4) inquiring as to any objective evidence of non-obviousness.

Accordingly, for the Examiner to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. (MPEP §2142 and §2143).

As such, Applicants respectfully believe that the Examiner has not established a *prima facie* case of obviousness in that Moriya fail to disclose, teach, or suggest, "Polyolefin compositions comprising, in percent by weight based on a total weight of the polyolefin compositions:

- 1) 55-90% of a crystalline propylene homopolymer or copolymer containing up to 15% of at least one of ethylene and C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) and having a value of MFR (230 °C, 2.16 kg) of at least 25 g/10 min; and
- 2) 10-45% of a copolymer of ethylene with at least one C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) containing from 10 to 40% of said C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s);

said compositions having MFR values of at least 20 g/10 min, a total content of ethylene of at least 20%, a total content of C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) of at least 4.5%, a ratio of the total content of ethylene to the total content of C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) of at least 2.3, a total fraction soluble in xylene at room temperature of less than 18 wt% and an intrinsic viscosity value of the fraction soluble in xylene at room temperature of at most 1.7 dl/g.”

In particular, Applicants respectfully believe that Moriya fail to disclose, teach, or suggest the currently claimed polyolefin compositions comprising, in part,

- (i) a total content of ethylene of at least 20%,
- (ii) a total content of C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) of at least 2.3,
- (iii) a ratio of the total content of ethylene to the total content of C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) of at least 2.3 and
- (iv) an intrinsic viscosity value of a fraction soluble in xylene at room temperature of at most 1.7 dl/g.

Moreover, Applicants respectfully believe that the Examiner has not identified *where* and *how* Moriya necessarily disclose or suggest each of (i)-(iv), and/or if any of (i)-(iv) are not necessarily disclosed by Moriya, *why* one having ordinary skill in the art would have modified Moriya to arrive at Applicant’s currently claimed polyolefin compositions comprising (i)-(iv), and *why* one having ordinary skill in the art would have expected to be successful in modifying Moriya. However, this is the Examiner’s initial burden to establish a *prima facie* case of obviousness. (MPEP §2142, §2143, §2143.01, §2143.02, and §2143.03).

In contrast, Moriya clearly discloses a polypropylene resin composition for use in automotive inner and outer trims comprising:

50 to 85% by weight of a crystalline polypropylene (A) having a melt flow rate (230°C under a load of 2.16 kg) of 7 to 70 g/10 min,

2 to 16% by weight of a hydrogenated block copolymer (B) obtained by hydrogenating at a hydrogenation ratio of at least 90% an aromatic vinyl/conjugated diene block copolymer which contains an aromatic vinyl block polymer unit derived from an aromatic vinyl in an amount of 22% by weight or less and has a melt flow rate (230°C under a load of 2.16 kg) of at least 5 g/10 min,

0 to 16% by weight of a hydrogenated block copolymer (C) obtained by hydrogenating at a hydrogenation ratio of at least 90% an aromatic vinyl/conjugated diene block copolymer which contains an aromatic vinyl block polymer unit derived from an aromatic vinyl in an amount of at least 25% by weight and has a melt flow rate (230°C under a load of 2.16 kg) of 10 g/10 min or less,

0 to 10% by weight of an aromatic hydrocarbon copolymer (D),

0 to 10% by weight of a crystalline polyethylene (E),

0 to 10% by weight of a soft ethylene/ $\alpha$ -olefin, copolymer (F), and

5 to 25% by weight of an inorganic filler (G) having an average particle size of 0.1 to 3  $\mu$ m. (col. 2, lines 20-50).

The Examiner appears to rely upon Moriya's optional component (F) to reach the limitation of Applicants' component 2) (page 4 of Office Action, citing col. 7, lines 1-4 and col. 6, lines 55-68). However, as Moriya discusses at col. 3, lines 17-22, any of Moriya's resin compositions containing optional component (F), also necessarily contain at least Moriya's essential components crystalline polypropylene (A), hydrogenated block copolymer (B) which is a product of hydrogenation of an aromatic vinyl/conjugated diene block copolymer, and filler (G). Therefore, at most, Moriya teach the use of optional component (F) only in conjunction with at least Moriya's essential components. In fact, Moriya disclose in Comp. Ex. 6, that a composition containing optional component (F), but not essential hydrogenated block copolymer (B) has inferior Brittle Temperature when compared to, for example, Example 4 and Example 11 (Table 1, col. 13-14)

There is thus no suggestion to modify Moriya's compositions by eliminating essential components and including optional components to arrive at the compositions exemplified in the current claims, and in any event, this is not permitted:

It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. *In re Wesslau*, 353 F.2d 238, 241 (1965)

Certainly, there would be no reasonable expectation of success in modifying the reference so as to eliminate essential components and include optional components, as suggested by Examiner, because it moves well away from what Moriya fairly teaches.

In particular, with respect to claims 4 and 5, although the Examiner has acknowledged that Moriya do not disclose the properties set forth in instant claims 4 and 5, he nevertheless relies upon inherency to conclude that these claim elements are met, arguing that Moriya teach a product appearing to be substantially identical to that of the claims. However, as discussed above, it is clear that Moriya do not teach substantially identical compositions. Moriya teach particular compositions containing at least a crystalline polypropylene (A), a hydrogenated block copolymer (B) and 5-25% by weight inorganic filler as required components. There is no basis for the conclusion that they are substantially identical to those recited in the current claims, or that they would possess the features recited in claims 4 and 5.

For the above reasons, Applicants respectively submit that a *prima facie* case of obviousness has not been made out. Reconsideration and withdrawal of the rejection respectfully is requested.

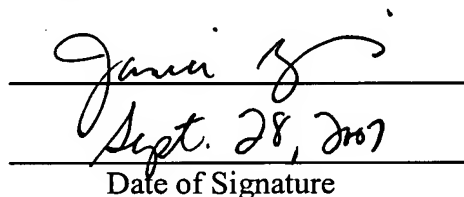
The Commissioner is hereby authorized to charge U.S. PTO Deposit Account 08-2336 in the amount of any fee required for consideration of this Amendment.

Respectfully submitted,



William R. Reid  
Registration No. 47,894  
Attorney for Applicant

I hereby certify that this correspondence is being deposited with sufficient postage thereon with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on September 28, 2007.

  
Date of Signature

Basell USA Inc.  
912 Appleton Road  
Elkton, MD 21921  
Attorney's Telephone No.: 410-996-1783  
Attorney's Fax No.: 410-996-1560